HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 712/06 (M/S)

Rai Bhadur Narayan Sugar Mills Ltd.

Vs

State of Uttaranchal.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 22.09.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 712 of 2006 (M/S)

Rai Bahadur Narayan Sugar Mills Ltd.,
Laksar, Haridwar,
Through its Deputy Manager, Legal,
Sri Naresh Kumar S/o Bhuwar Singh. ... Petitioner

Vs

1. State of Uttaranchal,
   Through Collector, Haridwar.
2. Additional Chief Revenue Commissioner,
   Uttaranchal, Dehradun.
3. A.D.M. (Finance), Haridwar. ... Respondents

With

Writ Petition No. 711 of 2006 (M/S)

Rai Bahadur Narayan Sugar Mills Ltd.,
Laksar, Haridwar,
Through its Deputy Manager, Legal,
Sri Naresh Kumar S/o Bhuwar Singh. ... Petitioner

Vs

1. State of Uttaranchal,
   Through Collector, Haridwar.
2. Additional Chief Revenue Commissioner,
   Uttaranchal, Dehradun.
3. A.D.M. (Finance), Haridwar. ... Respondents

With

Writ Petition No. 710 of 2006 (M/S)

Rai Bahadur Narayan Sugar Mills Ltd.,
Laksar, Haridwar,
Through its Deputy Manager, Legal,
Sri Naresh Kumar S/o Bhuwar Singh. ... Petitioner

Vs

1. State of Uttaranchal,
   Through Collector, Haridwar.
2. Additional Chief Revenue Commissioner,
   Uttaranchal, Dehradun.
3. A.D.M. (Finance), Haridwar. ... Respondents

&

Writ Petition No. 709 of 2006 (M/S)

Rai Bahadur Narayan Sugar Mills Ltd.,
Laksar, Haridwar,
Through its Deputy Manager, Legal,
Sri Naresh Kumar S/o Bhuwar Singh. ... Petitioner

Vs

1. State of Uttaranchal,
   Through Collector, Haridwar.
2. Additional Chief Revenue Commissioner,
   Uttaranchal, Dehradun.
3. A.D.M. (Finance), Haridwar. ... Respondents

Mr. Alok Singh, Senior Counsel assisted by Mr. D. Barthwal, Advocate for the petitioner.
Standing Counsel for the respondents.

Date: 22nd September, 2006

Hon'ble Rajesh Tandon, J.

Since, all these writ petitions arise out of common orders dated 24.05.2006 and 25.11.2005 passed by respondents Nos. 2 and 3 respectively and the issue involved in all these writ petitions is common, all these writ petitions are being disposed of by this common judgment.

2. Heard Mr. Alok Singh, Senior Counsel assisted by Mr. D. Barthwal, Advocate for the petitioner and the learned Standing Counsel for the respondents.

3. By the present writ petitions, the petitioners has prayed for quashing the orders dated 24.05.2006 and 25.11.2005 passed by respondents Nos. 2 and 3 respectively.

4. Brief facts of the case, as narrated in Writ Petition No. 712 of 2006 (M/S), are that the petitioner Company

sought permission for purchasing agricultural / horticultural land situated in Village Sikkar, Bukkanpur and Gopalpur, Tehsil Roorkee, District Haridwar from Uttaranchal Government for the purposes of establishing Agro and Food Processing Industry. The permission was granted to the petitioner on the following five conditions:

"उपर्युक्त विषयक आपके पत्र संख्या–1834/भूमि व्यवस्था दिनांक 8.12.2004 के सन्दर्भ में मुझे यह कहने का निदेश हुआ है कि श्री राज्यपाल महोदय मै0 रायबहादुर सिंह शूगर मिल्स लि0 लक्सर को एग्रो एण्ड प्रोसेसिंग उद्योग की स्थापना हेतु उत्तर प्रदेश जमींदारी विनाश एवं भूमि व्यवस्था अधिनियम, 1950 की धारा 154(2) एवं उत्तरांचल (उ0 प्र0 जमींदारी विनाश एवं भूमि व्यवस्था अधिनियम, 1950) (अनुकूलन एवं उपान्तरण आदेश, 2001) (संशोधन) अधिनियम, 2003 दिनांक 15.1.2004 की धारा 154(4)(3)(क) के अन्तर्गत जनपद हरिद्वार की तहसील रूड़की के ग्राम सिक्कर बुक्कनपुर एवं ग्राम गोपालपुर में कुल 34.54806 है0 भूमि क्रय करने की अनुमति निम्नलिखित प्रतिबन्धों के साथ प्रदान करते हैंः–

1. क्रेता धारा 129–ख के अधीन विषेश श्रेणी का भूमिधर बना रहेगा और ऐसा भूमिधर भविष्य में केवल राज्य सरकार या जिले के कलैक्टर जैसी भी स्थिति हो, की अनुमति से ही भूमि क्रय करने के लिये अर्ह होगा।
2. क्रेता बैंक या वित्तीय संस्थाओं से ऋण प्राप्त करने के लिये अपनी भूमि बन्धक या दृष्टि बन्धित कर सकेगा तथा धारा 129 के अन्तर्गत भूमिधरी अधिकारों से प्राप्त होने वाले अन्य लाभों को भी ग्रहण कर सकेगा।
3. क्रेता द्वारा क्रय की गई भूमि का उपयोग दो वर्ष की अवधि के अन्दर, जिसकी गणना भूमि के विक्रय विलेख के पंजीकरण की तिथि से की जोयगी अथवा उसके बाद एसी अवधि के अन्दर जिसको राज्य सरकार द्वारा ऐसे कारणों से जिन्हें लिखित रूप में अनिलिखित किया जायेगा, उसी प्रयोजन के लिये करेगा जिसके लिये अनुज्ञा प्रदान की गई है। यदि व ऐसा नही करता अथवा उस भूमि का उपयोग जिसके लिये उसे स्वीकृत किया गया था, उससे भिन्न किसी अन्य प्रयोजन हेतु करता है अथवा जिस प्रयोजनार्थ क्रय किया गया था, उससे भिन्न किसी अन्य प्रयोजन के लिये विक्रय, उपहार या अन्यथा भूमि का अनतरण करता है तो ऐसा अनतरण उक्त अधिनियम के प्रयोजन हेतु शुन्य हो जायेगा और धारा 167 के परिणाम लागु होगे।
4. जिस भूमि का संक्रमण प्रस्तावित है उसके भू स्वामि अनुसूचित जन जाति के न हो और अनुसूचित जाति के भूमिधर होने की स्थिति में भूमि क्रय से पूर्व सम्बन्धित जिलाधिकारी से नियमानुसर अनुमति प्राप्त की जायेगी।
5. जिस भूमि का संक्रमण प्रस्तावित है उसक भू स्वामि असंक्रमणिय अधिकार वाले भूमिधर न हो।"

5. It has further been stated by the petitioner that the recommendation for purchase of 34.54806 Hectare of land was given by the District Magistrate to the Chief Secretary, Land Resources Branch (Revenue), Uttaranchal Government vide letter dated 08.12.2004. The said recommendation letter dated 08.12.2004 is quoted below:

> "महोदय,
>
> कृपया उप प्रधान प्रबन्धक राय बहादुर नारायण सिंह शुगर मिल्स लि0 लक्सर, तहसील लक्सर जिला हरिद्वार द्वारा अधोहस्ताक्षरी को सम्बोधित प्रार्थना पत्र (मूल रूप से संलग्न) जो मौजा सिक्कर बुक्कनपुर एवं गोपालपुर परगना मंगलौर तहसील रूड़की जिला हरिद्वार में एग्रो फूड प्रोसेसिंग इण्डस्ट्री की स्थापना हेतु 34.54806 हैक्टेयर भूमि क्रय किये जाने की अनुमति दिये जाने के सम्बन्ध में है का अवलोकन करने की कृपा करें।
>
> उपरोक्त कम्पनी की स्थापना हेतु ग्राम बुक्कनपुर एवं गोपालपुर में स्थित भूमि 29.2191 है0 में जैसा कि प्रार्थी द्वारा सचिव, उद्योग विभाग उत्तरांचल शासन को सम्बन्धित प्रार्थना पत्र दिनांक 21.04.2004 (प्रार्थना पत्र मूल रूप संलग्न) में बाग का उल्लेख किया है (आम, जामुन, नींबू एवं आवला आदि) तथा ग्राम सिक्कर में स्थित कृषि भूमि 3.4289 है0 अर्थात कुल 34.54806 है0 भूमि क्रय किये जाने की अनुमति उ0प्र0 जमींदारी विनाश तथा भूमि व्यवस्था अधिनियम 1950 संशोधित अधिनियम 2003 (उत्तरांचल) की धारा 154(4)(a)(v) के अन्तर्गत दी गई व्यवस्था तथा शासनादेश सं0 10/1–1(1)/89–रा–1 दिनांक 09.01.1989 में उल्लिखित बिन्दु सं0 1 से 9 तक महाप्रबन्ध जिला उद्योग केन्द्र रूड़की, हरिद्वार से प्राप्त आख्या एवं बिन्दु सं0 10 से 20 पर आख्या संलग्न कर विचारार्थ प्रेषित है।"

6. According to the petitioner, the petitioner company purchased agricultural land (used as grove) of various khasra numbers totaling to 38 Khasras comprising of 3.4756 Hectare of Grove land, Chak No. 24 vide registered sale deed dated 07.04.2005, which are situated in Village Gopalpur, Pargana Manglore, Tehsil Roorkee, District Haridwar. It is stated by the petitioner that at the time of sale, the property in dispute was recorded as revenue paying Agriculture / Bhumidhari land. It is also stated in paragraph 5 of the writ petition that

the land was purchased for Rs. 9,15,975/- by the petitioner company. As per the circle rate fixed by the Collector, Haridwar at the relevant time, maximum circle rate of the land was Rs. 2,80,000/- per hectare, according to which, the value of the land (for grove) would be Rs. 14,59,752/- only, on which the stamp duty of Rs. 1,16,800/- was paid.

7. The petitioner was served with a notice from A.D.M. Finance under Section 47A of Stamp Act stating therein that the sale deed in question is undervalued and stamp duty paid is less. The A.D.M. Finance, vide impugned order dated 25.11.2005, observed that the petitioner company could use the land for purposes other than agriculture in future and hence the land should have been valued on much higher price and the petitioner was directed to pay Rs. 8,21,680/- towards the balance stamp duty and Rs, 1,31,472/- towards interest / penalty totaling to Rs. 9,53,152/- and in case of default, to pay Rs. 16,434/- per month as additional penalty.

8. Aggrieved by the aforesaid order dated 25.11.2005 passed by A.D.M. Finance (respondent No. 3), the petitioner went in revision before the Additional Chief Revenue Commissioner, Uttaranchal (respondent No. 2), which was registered as Revision No. 16/05-06. However, respondent No. 2 – Additional Chief Revenue Commissioner, Uttaranchal dismissed the said revision vide impugned order dated 24.05.2006.

9. Mr. Alok Singh, the learned Senior Counsel for the petitioner has submitted that the A.D.M. Finance as well as the revisional court i.e. the Additional Chief Revenue Commissioner have not considered that the stamp duty has to be paid on the basis of the land at the time of its purchase and not on the potential value of the land to come in use in future.

10. Mr. Alok Singh, the learned Senior Counsel for the petitioner has referred to the Government recommendation dated 08.12.2004 and the permission dated 06.01.2005 by which it will be established that the nature of the land, at the time of sale deed, was agriculture. The recommendation dated 08.12.2004 and permission dated 06.01.2005, referred to above, have not been considered by the two authorities.

11. Mr. Alok Singh, the learned Senior Counsel for the petitioner has also referred the decision in the case of **Rai Bahadur Narayan Sugar Mills Ltd. Vs. State of Uttaranchal and others** reported in **2005 (2) UD 503** and submitted that the future potential value of the land is wholly immaterial at the time of the execution of the sale deed and stamp duty has to be paid in accordance with the relevant date of which the deed was found to be executed and not on the basis of any imagination of the future potential value. The relevant paragraphs 14 to 22 of the decision in the case of **Rai Bahadur Narayan Sugar Mills Ltd. Vs. State of Uttaranchal and others** (supra) are quoted below:

"14. Section 47-A of the Stamp Act provides as under:-

> "47-A. Under-valuation of instrument.-[(1) (a) if the market value of any property, which is the subject of any instrument, on which duty is chargeable on market value of the property as set forth in such instrument is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer appointed under the Registration act, 1908, shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument, and before accepting it for registration and taking any action under Section 52 of the said Act, require the person liable to pay stamp duty under Section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with Section 23 of the Registration Act, 1908."

15. A perusal of Rules 340, 341 and 349 of the Stamp Rules provide the guidelines while deciding the question with regard to deficiency of stamp duty.

16. Rules 341 and 349 of the U.P. Stamp Rules, 1942 are quoted below:-

> "341. For the purposes of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust, referred to in Section 47-A(1) of the Act, shall be deemed to be not less than that at arrived on the basis of the multiples given below:
>
> (i) Where the Subject is land--
>
> (a) in case of Bhumidhari-800 times the land revenue;
>
> (b) in case of Sirdari land-400 times the land revenue;
>
> (c) where the land is not assessed to revenue but net profits have arisen from it during the three years immediately preceding the date of the instrument 25 times the annual average of such profits;
>
> (d) where the land is not assessed to revenue and not profits have arises from it during the three years immediately proceeding the date of the instrument 400 times the assumed annual rent;
>
> (e) where the land is non-agricultural and is situate within the limits of any local body referred to in clause © of the sub-rule (i) Rule 340-equal to the value worked out on the basis of the average price per square metre, prevailing in the locality on the date of the instrument,
>
> (ii) where the subject is grove or garden---
>
> (a) if assessed to revenue the value of the land shall be worked out in the manner laid down in Rule 341 (i) (a) and the value of the tress standing thereon shall be worked out according to the average price of the trees of the same size, and age prevailing in the locality on the date of the instrument.
>
> (b) If not assessed to revenue or in exempted from it, the value thereof shall be determined at 20 times the annual rent plus the premium or 20 times of the annual average of income which has arisen during the three years immediately preceding the date of instrument and the value of the trees thereon shall be determined in accordance with Rule 341 (ii) (a).

349. The Collector shall, in the course of enquiry, consider such documentary evidence and take such oral evidence as may be relevant or material regard to subject matter involve and complete the inquiry, as far as possible, within a period of three months and determine the market-value which shall not be less than that determined in accordance with Rule 341."

17. Rules 3 and 4 of the U.P. Stamp (Valuation of Property) Rules, 1997 also provide as under:-

"**3. Facts of be set forth in an instrument**.- In case of an instrument relating to immovable property chargeable with an ad valorem duty, the following particulars shall also be fully and truly stated in the instrument in addition to the market value of the property;-

(1) In case of land;

(a) included in the holding of a tenure holder, as defined in the law relating to land tenures:-

(i) the Khasra number and area of each plot forming part of the subject matter of the instrument;

(ii)) whether irrigated or un-irrigated and if irrigated, the source of irrigation;

(iii) if under cultivation whether do-fasali or otherwise;

(iv) land revenue or rent whether exempted or not and payable by such tenure holder;

(v) classification of soil, supported in case of instruments exceeding twenty thousand rupees in value, by the certified copies, or extracts from the relevant revenue records issued in accordance with law;

(vi) location (whether lies in an urban area, semi-urban area, or country side); and

(vii) minimum value fixed by the Collector of the district

4. Fixation of minimum rate for valuation of land, construction value of non-commercial building and minimum rate of rent and commercial building.-(1) The Collector of the district shall biennically, as far as minimum value per acre/per square metre of land, the minimum value per square metre of construction of non-commercial building and the minimum monthly rent per square meter of commercial building,

situated in different parts of the district taking into consideration the following facts-

(a) in case of land-

(i) classification of soil;

(ii) availability irrigation facility;

(iii) proximity to road, market, bus-station, railway station, factories, educational institutions, hospitals and government officers; and

(iv) location with reference to its situation in urban area, semi-urban area or countryside."

Circle rates are also fixed by the Collector in according with Stamp Rules, 1997.

18. In **Aniruddha Kumar and another Vs. Chief Controlling Revenue Authority, Uttar Pradesh, Allahabad and another 2001(18) LCD 1203**, the learned Single Judge of the Allahabad High Court has held that an agricultural land cannot be treated to be a residential plot and further Rules 341 and 349 of the U.P. Stamp Rules do not permit the market rate to be calculated on the basis of potential value. Relevant observations are quoted below:-

"8. A plain reading of sub-section (1) of Section 47 A shows that when the registering authority finds that the value set forth in an instrument is less than the minimum value determined in accordance with rules, in that event the registering authority is empowered to refer the same to the Collector for determination of the market value of such property and the duty payable thereon. Rule 341 is a guide-line for determining the minimum market value to find out if the valuation set forth in the instrument is even less than the minimum market value, and then he can assume jurisdiction to refer the same to the Collector. Thus rule 341 is a guiding factor to be taken into account for the purpose of determining the minimum market value in order to enable the registering authority to satisfy itself that the instrument produced before him, is one fit for reference under sub-section (1) of Section 47A. We may note that the expression used is less than even the minimum market value." The use of the expression pre-supposes that the valuation is to be less than the minimum value which could be determined according to rules. But at the same time sub-rule (2) prescribes that without prejudice to sub-section (1), if the registering authority has reason to believe that the market value set forth in the instrument has not been truly set forth, then he can refer the matter to the Collector under sub-Section (2). Thus the

contention of Mr. Kesari to the extent that unless the value is less than the minimum as provided in sub-section (1) read with Rule 341 the registering authority cannot assume jurisdiction to refer the same under Section 47A and the Collector could not have assumed jurisdiction upon such a reference and that the entire proceeding is void and without jurisdiction cannot be accepted. By reason of sub-section (1) when the value is less than the minimum in terms of Rule 341, then the registering authority may refer the same to the Collector. Then again by reason of sub-section (2), he has the same jurisdiction to refer wherever he has reason to believe that the market value set forth in the instrument, has not been truly set forth even if the valuation set forth may be higher than the minimum market value. Thus I am unable to agree with the contention of Mr. Kesari that the proposition impugned in these proceedings is void r the orders passed are without jurisdiction as such.

14. In the present case, from the revenue records, admittedly, the land appears to be an agricultural land. Even tough some fraction has been purchased still then on the date of purchase it remained agricultural land and, therefore, it cannot be treated to be a residential plot and the valuation cannot be determined straightway on such an assumption that the land is situated in close proximity of residential plot and that the land has to be treated as residential plot and the valuation is to be determined on the basis of building potential. In act, the market value has to be determined on the basis of the character of the land as well as usage thereof and user of the same having regard to the other factors as are provided in the Act and the Rules. It would be immaterial whether the land is residential plot or agricultural land and for the purpose of determining the market value since the market value is to be determined on the basis of the factors that are laid down in the Act and the Rules.

15. Rule 340 A provides for circulation of a circle rate, which according to Ms. Goswami is an average rate of an area. In his usual fairness, Mr. Goswami has poitne dout that the provisions contained in Rule 340A is also a guiding factor and is not a binding principle. The valuation that has to be determined is the market value, which may be less or more than the circle rate depending on each individual case having regard to the various factors which had to be weighed at the time of determining

the valuation. As rightly contended by Mr. Kesari as well as Mr. Goswami, Rule 340 A is also a guiding factor which lays down the guide line about the average market value of the land situated in the area. The circle rate cannot be treated to be binding and unenforceable. It is to be treated as average rate of market value in the area. The market value of a particular land is to be determined having regard to the various factors as are necessary to be gone into. In so determining, the circle rate may also be one of the factor to be taken into consideration. The price may be more or less than the circle rate prescribed having regard to the facts or each case, which has to be taken into account by the authorities concerned.

"19. In the present case the market value is to be determined on the basis of the value that would satisfy the vender. Thus the question of future potential cannot be a factor for determining the market value of such a land for the purpose of stamp duty payable under the Stamp Act. The vendee pays the price that satisfies the vendor and, therefore, it is the utility of the land as on the date of transfer by the vendor and as such, if the land was an agricultural land, it has to be treated as such and the valuation has to be done accordingly. Whether in future the purchaser puts the land into residential use or change the character is immaterial for the purpose of payment of stamp duty. The principle that has been laid down in P. Ram Reddy (Supra) can be attracted of the purpose of determining the market value only to the extent of potential as on the date of transfer and not beyond. Thus the market value has to be determined according to the factors, which includes the situation of the land, the amenities available in and around and various other factors, including the close proximity of the residential area as well as any transfer made immediately before the transfer or after the transfer in close proximity if such documents are produced in respect of the area that similarly situated land by either of the parties.

20. In the case of Prakashwati v. Chief Controlling Revenue Authority, Board of Revenue, Allahabad (1996 AWC 1331) the apex court had held that situation of a property in an area close to a decent colony not by itself would make it part thereof and should not be a factor for approach of the authority in determining the market value. According to the said decision, valuation has to be

determined on constructive materials which could be made available before the authorities concerned."

19. In **Rakesh Chandra Mittal and others Vs. Additional District Magistrate (Finance and Revenue) Moradabad and others (2004 All. CJ. 1001)**, the Division Bench of the Allahabad High Court has held as under:-

> "It is well settled that market value of the property has to be determined with reference to the date on which the document is executed. Market value as such keeps on varying and changing. Any subsequent improvement or change in the nature of user of the land, which may result into enhancement of the market value of the property, is not to be taken into account and it is only the value of the property on the date of execution of the document that is to be considered for the purpose of determination of proper stamp duty payable on the instrument."

20. In **Ramesh Chand Bansal and others V. District Magistrate/ Collector Ghaziabad and others 1999 (90) RD Page 499(S.C.)**, the Apex Court has held as under:-

> "It would thus be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi—judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself, before registering the document whether the true price is reflected in the instrument as it prevails in the locality."
>
> "Thus, an obligation is cast on the authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, the Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village, from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is the likely value of such property in that area. In its absence it would be very difficult for such registering authority to assess the valuation of such instrument. It is to give such support to the registering authority that Rule 340-A

is introduced. Under this the Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area concerned.
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Thus, the circle rate, as aforesaid, is merely a guideline and is also indicative of a division of exercise of power between the registering authority and the Collector.

6. Reverting to the submission for the appellants that enhancement by 20% for the next year in question was beyond the power of the Collector under Rule 340-A as he could only fix one circle rate in a span of two years, we find no merit in it. Under the said rule the Collector has to supply biennially to the District Registrar a copy of the statement recording circle rate and the average price of land etc. in every pargana, corporation or local body of his district. The supply of biennial statement would only mean supplying such statement once in two years but while supplying that statement there is no inhibition either under this rule or any other rule or under the Act nor any pointed out which restricts the Collector to give such rate differently for two years. The restriction, if any, is that such statement shall only be supplied once in two years. If there be any material in possession of the Collector clearly indicating a regular pattern of increasing percentage of the price of land every year then to that extent if he in his biennial statement refers to such increase for the following years it cannot be said that the Collector lacks competence to exercise such power. As we have said, this assessment by the Collector is only prima facie and is not final and is open to both the authorities or persons seeking registration to prove to the contrary the actual market value of such property. This circle rate in no way affects any party when finally determining its value. In the present case, the vires of this rule is not under challenge, nor is there any challenge that there was no such material before the Collector to enhance for subsequent year by 20 per cent. WE do not find any such ground raised, nor could the appellants point out any raised before the authorities concerned. On the contrary, learned counsel for the State submits that there was sufficient material before the State showing the trend of increase in land prices during the relevant years in question to sustain the fixation of 20% enhanced price for the next year in question."

21. Learned counsel for the petitioner has further referred the judgment of **2004. All. CJ, 402 Sheo Prakash Gupta Vs. State of U.P. and others; 2000 (18) LCD 1203 Anirudhadha Kumar and another Vs. Chief Controlling Revenue Authority, Uttar Pradesh and another**. It has been held in all the cases that the potential value has not to be seen while taking into consideration the stamp duty.

22. From Rules 341 and 349 of the U.P. Stamp Rules, 1942 as well as Rules 3 and 4 of the U.P. Stamp (Valuation of Property) Rules, 1997 and G.O. dated 25.09.1997, it is evident that the market value has to be calculated on the basis of the relevant date on which the sale deed has been executed and the potential value of the land has nothing to do. In the present case, the land in question has been recorded as an agricultural land as will appear from the Khatauni and therefore, the notice issued under Section 47-A of the Indian Stamp Act as amended in State of U.P. on the basis of the potential value of the land or the future user of the land cannot be made a criteria for determining the value of the land."

12. Mr. Alok Singh, the learned Senior Counsel for the petitioner has also referred the decision of Addl. Chief Revenue Commissioner, Dehradun in the case of **Pragati Associates Vs. Government of Uttaranchal** reported in **2006 UAD 524.** Relevant paragraphs 5 & 6 of the said decision are quoted below:

" पुनरीक्षणकर्ता की ओर से मुख्य तर्क यह दिया गया है कि वर्ष 2001–03 सर्किल रेट लिस्ट में पंडितवाड़ी ग्राम के लिये आवासीय व व्यावसायिक दरों के साथ कृषि भूमि की सिंचित तथा असिंचित दरें भी सम्मिलित की गई थीं जो वर्ष 2003–05 की सर्किल रेट लिस्ट में नही है। पुनरीक्षणकर्ता द्वारा क्रय की गई भूमि मुख्य मार्ग से काफी दूर है और कृषि कार्य में उपयोग हो रही है जैसा कि स्थल निरीक्षण आख्या से भी विदित है। अतः उक्त भूमि पर आवासीय दर से स्टाम्प शुल्क आरोपित नही होना चाहिये।

6. .....उल्लेखनीय है कि वादग्रस्त भूमि का उपयोग कृषि के लिये किये जाने सम्बन्धी अपर तहसीलदार की स्थल निरीक्षण आख्या भी वाद पत्रावली पर उपलब्ध है, अतः ऐसी स्थिति में उक्त भूमि का मूल्यांकन नियमानुसार आवासीय दर पर किया जा सकता है अथवा नहीं, इस बिन्दु का नियमों एवं स्थापित सिद्धान्तों के परिपेक्ष्य में पुनर्परीक्षण किये जाने की आवश्यकता है। इस संबन्ध में पुनरीक्षणकार्ता द्वारा प्रमुख सचिव, राजस्व, उत्तरांचल शासन/मुख्य

नियंत्रक राजस्व अभिकरण को प्रस्तुत प्रार्थना पत्र दिनांक 13.7.2005 उल्लेखनीय है जिस पर प्रमुख सचिव/मुख्य नियंत्रक राजस्व अभिकरण द्वारा जिलाधिकारी देहरादून को छूटे हुए क्षेत्रों के लिये भी सर्किल रेट निर्धारित करने के आदेश पारित किये गये हैं। इसके अतिरिक्त पुनरीक्षणकर्ता की प्रार्थना पर मण्डलायुक्त, गढ़वाल द्वारा भी अपर जिलाधिकारी (वित्त एवं राजस्व) को प्रश्नगत प्रकरण में कृषि दर पर कार्यवाही हेतु निर्देशित किया गया है। अधिवक्ता पुनरीक्षणकर्ता द्वारा प्रस्तुत 2005(11) यू0डी0 135 की व्यवस्था, भी महत्वपूर्ण है जिसमें अवधारित किया गया है कि कृषि भूमि पर आबादी की दर से स्टाम्प नही लिया जा सकता।"

13. In view of the above, the orders dated 24.05.2006 and 25.11.2005 passed by respondents Nos. 2 and 3 respectively are quashed. The matter is remanded back to the Addl. Chief Revenue Commissioner, Uttaranchal (respondent No. 2) for deciding the matter afresh in accordance with the observations made above.

14. Accordingly, all the writ petitions are allowed. No order as to costs.

(Rajesh Tandon, J.)